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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/621,749 | 07/17/2003 | W. John Gardenier | 1442.033B | 1803 |
| 7590 | 04/08/2005 | | EXAMINER | |
| John Pietrangelo Heslin Rothenberg Farley & Mesiti P.C. 5 Columbia Circle Albany, NY 12203 | | | PHILLIPS, CHARLES E | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3751 | |

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|---------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/621,749 | GARDENIER ET AL. |
| | Examiner | Art Unit |
| | Charles E. Phillips | 3751 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 December 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 21-30 and 43-51 is/are pending in the application.
 4a) Of the above claim(s) 49-51 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 21-30 and 43-48 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Claims 21-48 are rejected over the art and for the reasons set forth in the previous office action.

Applicant argues the 102 rejection over Kvalvik on page 7, first, that "Kvalvik is not a sound system for a spa, as claimed". This argument is not specific and lacks reasoning. Kvalvik clearly teaches a sound system at 38 and 40 and as set forth in Figure 5 is used in a spa. Second applicant argues that Kvalvik 'does not have "an upper rim of substantially uniform elevation" as claimed'. Contrary to this the tub as seen in Figures 1 and 5 possesses a rim R which is "of substantially uniform elevation". Applicant's headrest 230 extends above the housing 224 just as that of Kvalvik. As no dimension of either are disclosed the term "so as not to substantially alter the substantially uniform elevation" is deemed met by both.

Re: claim 29, if drawn to Figure 9 is limited to that shown therein, which is not the substance argued for on page 8.

Re: claims 43 and 44, and the queried reference by the examiner to Figure 5 of Kvalvik on page 2 of the rejection; the reference to Figure 5 is for the sole purpose of the showing of a spa. That is, to the extent that these claims call for the combination of the sound systems of claim 21 with a spa, same is taught by Figure 5 of Kvalvik. With respect to "directly" of claim 44, as the sound system is carried by 14 which is mounted directly to the spa, the sound system would be mounted directly to the spa. The instant specification describes nothing about a direct connection of 244 of Figure 9.

Re: claim 46, the spa housing of Kvalvik certainly would meet the phrase "a substantially rigid structure".

The same reasoning applies to claims 47-48 as applied to claim 43.

In response to the arguments of the Diamond v Kvalvik rejection of claims 21-30 and 43-48, it is pointed out that the base claim 21 calls for the sub-combination of a "sound system" not a spa and sound system combination. Notwithstanding, Diamond shows the "upper rim of substantially uniform elevation" as set forth in the rejection.

The arguments on pages 11-12 are not well taken in that the headrest and speakers of Diamond are not at a level to be affected by water in the tub. Furthermore, the ordinary artisan would have possessed the skill to avoid such a location if it were present.

The traversed of the "restriction requirement" is noted. The requirement of 5/26/2004 was an election of species, not a restriction. Applicant should consult the MPEP in order to ascertain the difference. The requested rejoinder is the burden of applicant and must accompany a showing of how the claims drawn to non-elected species are properly rejoined under an allowed generic claim. This requirement is hereby made final.

Any inquiry concerning this communication should be directed to Charles Phillips at telephone number (571) 272-4893.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Phillips/am

March 30, 2005



Charles E. Phillips
Primary Examiner